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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,176	08/07/2003	Ulrich Birnbaum	DT-6589	3754

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EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/638,176

Applicant(s)

BIRNBAUM, ULRICH

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "The round bar" of claim 14 which depends from claim 10 lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

Claims 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Larsen (US patent no. 6,598,270). Larsen discloses a system for fastening to a profile section (22, figure 3) comprising at least two bracket element (figure 3 and figure 4A) for fastening a mounting element (30, figure 3) to a profile section with at least an outer wall having openings (not labeled, see holes along 22, in figure 3) in a predefined spacing on at least one outer wall (figure 3), the bracket element (figure 4A) has a first member (34) and a second member (33) that is oriented vertical to the first member, the first member (34) has at least one opening (35) for fastening the bracket element to the support (22) and the second member (33) has at least one elongated opening (36, figure 4A) for fastening the mounting element (30, figure 3) to the bracket element (32), wherein the first member (34) of the bracket element comprises an alignment means (bent portion at 32) for orienting the bracket element on the support (22) and wherein the elongated opening (36) in the second member (33) is arranged parallel to the alignment means (bent portion 32); wherein the outer contour of the support surface at

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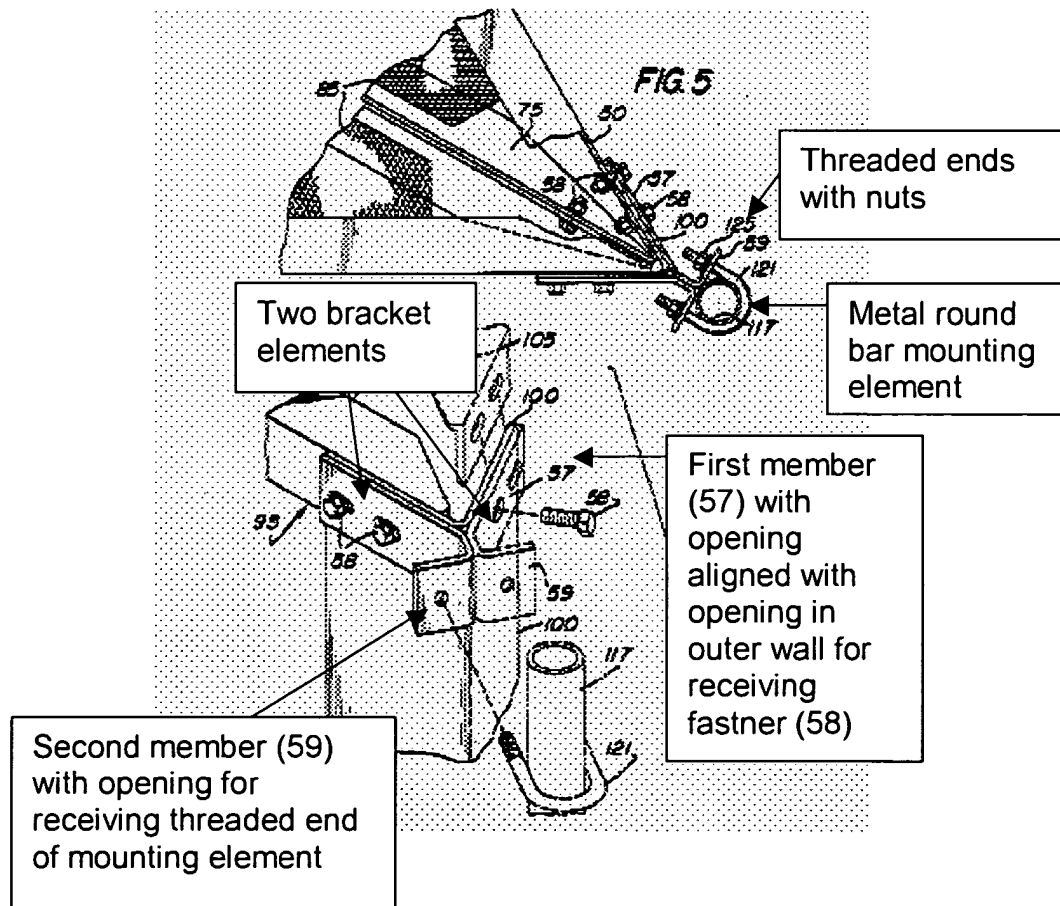
least of the first member (34) of the bracket element is complementary to the outer contour of the support surface of the support.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabro (US patent no. 5,954,305) in view of Bailey (US patent no. 5,566,916). Calabro disclosed most the claimed features of applicant's invention as illustrated below.



However, Calabro does not show the opening of the second member of the bracket element as being an elongated opening.

Bailey teaches in a conduit fastening system for affixing a pipe (figure 4) to a system support (45, figure 2) of an assembly system, wherein the conduit system fastening system comprises at least two bracket elements (81, figure 4) for the purpose of fastening at least one mounting element being a rounded bar with a threaded ends (79) to the support (45, 61, figure 3), wherein the bracket element has a first member (95) and second member (81, figure 4) angled relative to the first member and having an elongated opening (figure 4) so that the threaded free ends of the rounded bar mounting element can pass therethrough. It would have been obvious to one of ordinary skill in the art to modify the opening at the bracket element second member of Calabro such that it is elongated to facilitate adjustment as taught by Bailey.

Applicant's arguments filed 8/3/2004 have been fully considered but they are not persuasive. Regarding Larsen, applicant argues that Larsen is not combination with Bailey. However, there has not been any rejection based on the combination of Larsen and Bailey.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Korie H. Chan
Primary Examiner
Art Unit 3632

khc
October 18,, 2004